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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,949	06/21/2001	Isabelle Afriat	209060US	2772

22850 7590 03/26/2003

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EXAMINER
WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
1617	17

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/884,949	Applicant(s) AFRIAT, ISABELLE	
	Examiner Lauren Q Wells	Art Unit 1617	

--The MAILING DATE of this communication app ars on the c ver sheet with the correspondence address --

THE REPLY FILED 10 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.☒ A Notice of Appeal was filed on *10 March 2003*. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.☐ The proposed amendment(s) will not be entered because:

(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ they raise the issue of new matter (see Note below);

(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3.☐ Applicant's reply has overcome the following rejection(s): _____.

4.☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6.☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: *1-29*.

Claim(s) withdrawn from consideration: _____.

8.☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9.☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____

10.☐ Other: _____

SREENI PADMANABHAN
PRIMARY EXAMINER 3/21/03

Continuation of 5. does NOT place the application in condition for allowance because: a) the 35 USC 103 rejections are maintained for reasons of record in the Office Action mailed 10/8/02, Paper No. 12; b) Applicant argues, "the Rule 132 declaration. . .demonstrates that W/O emulsions containing 80% or more aqueous phase and the claimed silicone emulsifier "break" more readily than W/O emulsions containing less aqueous phase". This argument is not persuasive. First, these showings are not commensurate in scope with the instant invention. The instant claims recite a comopsition comprising at least 80% of an aqueous phase and the instant declaration only provides only example within this range, wherein the aqueous phase comprises 80% of the composition. Second, the Examiner respectfully points out that in the 1st declaration, it is stated that when compositions are applied to the skin the user applies a pressure (shear stress) of about 100 Pa to about 1000Pa. The graph depicting the shear properties of the inventive composition (comprising 80% aqueous phase) shows a shear stress of 15-375 Pa. However, only at 350 and 375 PA, does the composition break. Thus, the inventive compositions do not unexpectedly break when a user applies a shear stress of 100-349Pa to the composition on the skin. Applicant has not provided unexpected showings that are commensurate in scope with the instant claims or that are of practical significance..